

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 1:20-cv-642

\$2,148,002.45 IN FUNDS FROM PLAINS CAPITAL
BANK ACCOUNT NO.-1836 ,

Defendant-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Plaintiff, United States of America, brings this complaint in accordance with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to forfeit and condemn to the use and benefit of the United States of America property involved in violations of 18 U.S.C. § 1956 and the Controlled Substances Act that is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(A) and 21 U.S.C. § 881(a)(6)

DEFENDANT *IN REM*

2. The defendant *in rem* consists of the following:

\$2,148,002.45 In Funds From Plains Capital Bank Account No.-1836
(Hereafter referred to as “Defendant Funds”).

3. The Drug Enforcement Administration (DEA) seized the Defendant Funds on August 6, 2015, pursuant to a seizure warrant issued in the District of New Mexico.

4. The Defendant Funds are now, and during the pendency of this action will be, in the jurisdiction of this Court.

5. In a written settlement agreement dated November 1, 2016, the known potential claimants to the Defendant Funds agreed to the forfeiture of the Defendant Funds to the United States and waived and relinquished any and all rights to contest the forfeiture of the Defendant Funds and all rights to judicial review of the seizure and/or forfeiture of the Defendant Funds.

6. The DEA subsequently forfeited the Defendant Funds in a Declaration of Administrative Forfeiture. Administrative forfeiture of personal property is limited to property not exceeding a value of \$500,000, *See* 19 U.S.C. § 1607(a)(1), with the exception of currency or a monetary instrument of any value. *See* 19 U.S.C. § 1607(a)(4). In issuing the Declaration of Forfeiture, the DEA treated the Defendant Funds as currency or a monetary instrument. Bank accounts, however, are not specifically defined as currency or monetary instruments. *See* 31 U.S.C. § 5312(a)(3). Even though the Defendant Funds were forfeited administratively by agreement, the DEA determined that the Defendant Funds should have been forfeited in a judicial proceeding and notified the U.S. Attorney's Office for the District of New Mexico. Accordingly, the United States brings this action to seek a judicial order forfeiting the Defendant Funds.

JURISDICTION AND VENUE

7. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a) and 1356.

8. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture that took place in this district

and the property is found in this district. Upon the filing of this complaint, the Defendant Funds will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

FACTS

9. A DEA investigation revealed that three smoke shops engaged in on-going retail sales of synthetic cannabinoids, which were comprised of illegal Schedule I analogue controlled substances. These synthetic cannabinoids, commonly known as “spice,” were sold in three shops owned and operated by one family. One shop operated under the name “Up in Smoke” and did business in Hobbs, New Mexico. Two shops operated under the name “Just Smokes” and did business in Lubbock, Texas and in Plainview, Texas. During the investigation, a DEA agent, acting in an undercover capacity, made purchases of “spice” from the shops in Hobbs, New Mexico and Lubbock, Texas.

10. Agents identified 11 bank accounts associated with the shops selling the illicit cannabinoids. The accounts were maintained at Lea County State Bank in Hobbs, New Mexico and Plains Capital Bank and Prosperity Bank in Lubbock, Texas. From February 1, 2014 through December 31, 2014, a minimum of \$911,000 in funds from the accounts were used to purchase illegal synthetic cannabinoids and related products from wholesale distribution companies. Retail sales of the “spice” and related materials products from the three shops generated income exceeding three times the amounts spent on the wholesale purchases.

11. Analysis of bank records revealed that proceeds from the retail sales of the synthetic cannabinoids were deposited into the accounts and subsequently transferred among the accounts via check or electronic transfer. These transfers were designed to conceal or disguise the nature, location, source, ownership or control of the proceeds of the sales of illegal drugs.

12. Agents determined that two large sums derived from sales of illegal cannabinoids were deposited into a personal money market account at Plains Capital Bank in Lubbock, Texas, (money market account) on March 7, 2014. One of the deposits occurred when a commercial checking account in the name “Just Smokes” was closed and the remaining balance of \$162,307.92 was moved into the money market account. A second deposit was made via a check from “Up in Smoke” for \$430,890.56.

13. On June 9 2015, agents executed search and seizure warrants on eight accounts and locations associated with the smoke shop businesses. Agents seized a cumulative total of approximately \$1,054,404.35 from the accounts. The execution of the search warrants resulted in the discovery, *inter alia*, of the following:

a. approximately \$1,057,495.00 in U.S. currency and approximately 21.8 gross kilograms of synthetic cannabinoids at the residence of one of the principal owners of the smoke shops;

b. approximately 17.90 gross kilograms of synthetic cannabinoids and drug paraphernalia at Just Smokes in Plainview, TX;

c. approximately 17.91 gross kilograms of synthetic cannabinoids and drug paraphernalia at Just Smokes in Lubbock, TX; and

d. approximately 6.72 gross kilograms of synthetic cannabinoids and drug paraphernalia at Up in Smoke in Hobbs, NM.

14, On August 3, 2015, a Plains Capital Bank officer revealed the existence of investment account-1836 (account-1836) to DEA agents as they continued their investigation. The agents learned that the money market account discussed above in paragraph 11 had been closed on or about January 14, 2015, and the funds in the money market account transferred to

account-1836, which was opened on the same day. Moreover, the bank officer informed agents that account-1836 had been opened with funds transferred from the accounts seized on June 9, 2015.

15. On August 6, 2015, agents obtained and executed a federal seizure warrant on the Defendant Funds held in account-1836 Plains Capital State Bank in Lubbock, TX.

FIRST CLAIM FOR RELIEF

16. The United States incorporates by reference the allegations in paragraphs 1 through 14 as though fully set forth.

17. Title 21, United States Code, Section 881(a)(6) subjects to forfeiture “[a]ll moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.”

18. Defendant Funds were furnished, or intended to be furnished, in exchange for a controlled substance, or constitute proceeds traceable to such an exchange, or were used or intended to be used to facilitate a violation of the Controlled Substances Act and are thus subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6).

SECOND CLAIM FOR RELIEF

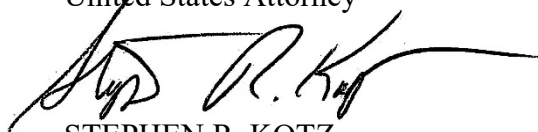
19. The United States incorporates by reference the allegations in paragraphs 1 through 14 as though fully set forth.

20. Defendant Funds are subject to arrest and forfeiture to plaintiff under 18 U.S.C. § 981(a)(1)(A) because the funds were involved in transactions or attempted transactions in violation of 18 U.S.C. § 1956 or constitute property traceable to such property.

WHEREFORE: Plaintiff seeks arrest of Defendant Funds and forfeiture of same to Plaintiff, determination of the validity and priority of claims of the Claimants and any Unknown Claimants to the Defendant Funds, costs and expenses of seizure and of this proceeding, and other proper relief.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

A handwritten signature in black ink, appearing to read "Stephen R. Kotz", with a long horizontal flourish extending to the right.

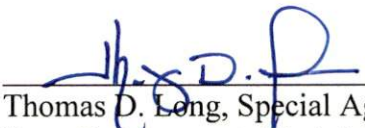
STEPHEN R. KOTZ
Assistant U.S. Attorney
P.O. Box 607
Albuquerque, NM 87103
(505) 346-7274

28 U.S.C. § 1746 DECLARATION

I am a Special Agent with the Drug Enforcement Administration who has read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached; and the statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 07/01/2020



Thomas D. Long, Special Agent
Drug Enforcement Administration

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

\$2,148,002.45 IN FUNDS, ET.AL.,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

IV. NATURE OF SUIT (Place an "X" in One Box Only)**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. § 981(a)(1)(A), 21 U.S.C. § 881(a)(6)

Brief description of cause:

VII. REQUESTED IN☐ CHECK IF THIS IS A CLASS ACTION

DEMAND \$

CHECK YES only if demanded in complaint:

COMPLAINT:

UNDER RULE 23, F.R.Cv.P.

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S)**

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/1/2020

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE